

Citation: *R. v. Warrant Officer J.M.J. Tourville*, 2009 CM 1006

Docket: 200861

**GENERAL COURT MARTIAL
CANADA
QUEBEC
713 COMMUNICATION REGIMENT (BEAUPORT)**

Date: 11 May 2009

PRESIDING: COLONEL M. DUTIL, C.M.J.

**HER MAJESTY THE QUEEN
v.
WARRANT OFFICER J.M.J. TOURVILLE
(Offender)**

**SENTENCE
(Rendered orally)**

OFFICIAL ENGLISH TRANSLATION

[1] On 8 May 2009, the offender was found guilty by a General Court Martial of the three charges laid against him for offences related to corrupt practices, which he committed in April 2006 when he was assistant to the defence attaché posted in Mexico City, Mexico. Findings of guilty were made on two counts of fraud on the government under section 130 of the *National Defence Act*, contrary to paragraph 121(1)(c) of the *Criminal Code*, which he committed by accepting a benefit for himself and his wife from a person who had dealings with the government, while the third finding of guilty resulted from a charge of fraud laid under section 130 of the *National Defence Act*, contrary to section 380 of the *Criminal Code*, for having deprived or defrauded Carlos Diaz Sanchez of an amount of less than \$5,000.

[2] I must now determine the sentence that is to be imposed on Warrant Officer Tourville. The Court accepts as proven all facts, express or implied, that are essential to the General Court Martial panel's finding of guilty. Central to these facts are the expenses incurred by Warrant Officer Tourville while on temporary duty travel from 27 March 2006 to 31 March 2006 in Cancun, Mexico, as part of a summit between the heads of state of the United States and Mexico and the Prime Minister of Canada, when Warrant Officer Tourville was the Canadian Defence Attaché Assistant in Mexico City

between July 2004 and July 2006. Warrant Officer Tourville was accompanied by his spouse. According to the evidence heard at trial, Warrant Officer Tourville accepted a benefit from Carlos Diaz Sanchez, a person who had dealings with the Canadian Embassy as a contractor, and defrauded this same person of a sum of money by falsehood or other fraudulent means. It appears that in the course of the travel preparations, Carlos Diaz Sanchez booked flights for Warrant Officer Tourville and his spouse Marie-Claude so that all three of them could travel together. This was because Warrant Officer Tourville and Mr. Diaz had to work closely together during the visit of the heads of state for the provision of administrative and logistical services related to the military aircraft used by the Prime Minister of Canada and the security of that aircraft. Mr. Sanchez had made said airplane ticket bookings using his personal credit card. Furthermore, Mr. Diaz also paid additional fees as a result of a change in the itinerary of Warrant Officer Tourville's returning flight to Mexico City. Warrant Officer Tourville agreed to reimburse the cost of the purchase of said airplane tickets and the fees related to the itinerary change. Mr. Diaz also agreed to bring an extra suitcase belonging to Warrant Officer Tourville back with him, for which he had to pay excess baggage fees. Mr. Carlos Diaz Sanchez's testimony during the trial revealed that he was not reimbursed for said expenses in spite of the agreement to that effect between Warrant Officer Tourville and himself, even though the offender submitted to the contrary during his testimony at trial. In addition, Mr. Diaz testified that he had also lent 10,000 pesos to Warrant Officer Tourville to cover some of his spouse's personal expenses on this trip and that he was not reimbursed, despite Warrant Officer Tourville's allegations to the contrary.

[3] Imposing a sentence is by far the most difficult task for a judge. In *R. v. Généreux*,¹ the Supreme Court of Canada held as follows:

... To maintain the armed forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. ...

It emphasized that in the particular context of military discipline,

... Breaches of ... discipline [should] be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. ...

However, the law does not allow a military court to impose a sentence composed of a punishment or punishments that would be beyond what is required in the circumstances of a case. In other words, any sentence imposed by a court, whether civilian or military, must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern theory of sentencing in Canada.

¹[1992] 1 S.C.R. 259

[4] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, though they vary slightly from one case to another. The weight assigned to them must be adjusted according to the circumstances of the case. The Court has considered all of the evidence filed at trial, as well as that which was presented during the sentencing part of the hearing, in accordance with the principles that are applicable to sentencing, including the objectives and principles set out in sections 718, 718.1 and 718.2 of the *Criminal Code* wherever they are consistent with the mandatory requirements for maintaining a disciplined, operational and effective armed force and with the sentencing rules set out in the *National Defence Act*. The Court also took into consideration any indirect consequence of the finding or the sentence on the offender, as well as the direct consequences of this finding and sentence. Lastly, the Court examined these various factors in light of the arguments of counsel and the case law they submitted to the Court. In the context of military justice, the objectives and principles of sentencing are generally the following:

First, the protection of the public, which includes the Canadian Forces;

Second, the punishment and denunciation of the offender;

Third, the deterrence of the offender and anyone else from committing the same offences;

Fourth, the separation of the offender from society, including members of the Canadian Forces, where appropriate;

Fifth, the rehabilitation and reform of the offender;

Sixth, the proportionality and seriousness of the offences and the degree of responsibility of the offender;

Seventh, consistency in sentencing;

Eighth, the imposition of a custodial sentence that is warranted only where the Court is satisfied that it is necessary as a last resort; and

Last, the Court will take into account aggravating and mitigating circumstances relating to the circumstances of the case and the offender's situation.

[5] It will come as no surprise that in matters of fraud or frauds on the government, general deterrence is the key factor in sentencing. It is imperative that the courts show the public that dishonesty and fraud will not be tolerated, even in less serious situations.

In the context of paragraph 121(1)(c) of the *Criminal Code*, this provision is aimed at protecting and preserving the appearance of the government's integrity by criminalizing the conduct of government officials and employees who, in certain circumstances, accept a benefit from a person who has dealings with the government.

[6] In addition to the administrative documents filed by counsel for the prosecution, both the evidence heard and filed before the Court during the sentencing procedure and the testimony given at the hearing regarding the excellence of Warrant Officer Tourville's performance mention the sense of professionalism that he has shown ever since he joined the Reserve Force. The Court took these points into account and examined them in accordance with the criteria and factors applicable to sentencing.

[7] The Court believes that the following factors either mitigate or aggravate the sentence. It considers the following to be aggravating:

First, the objective seriousness of the offences of fraud on the government and fraud. The crime of fraud on the government within the meaning of paragraph 121(1)(c) of the *Criminal Code* is an indictable offence for which the guilty person is liable to imprisonment for a term not exceeding five years. Under section 380 of the *Criminal Code*, any person who is found guilty of fraud for an amount not exceeding \$5,000 is guilty of either an indictable offence and liable to imprisonment for a term not exceeding two years or an offence punishable on summary conviction. In matters of fraud, Parliament has implicitly expressed a heightened level of denunciation for fraud committed by persons when the offender's employment, employment skills or status or reputation in the community were relevant to, contributed to, or were used in the commission of the offence by not permitting the Court to regard these factors as mitigating. In short, these are serious offences, even though the sums obtained by means of this fraud are relatively insignificant.

Second, the breach of Carlos Diaz Sanchez's trust is considered by the Court to be aggravating, since he was a person who had dealings with the government and was a vulnerable person in the context of his income being linked to his contractual relationship with the Canadian Embassy in Mexico City.

Third, the fact that the commission of a crime of fraud on the government is a direct attack on the bond of trust that must exist between a government employee and the government institution in order to uphold the government's integrity in its business dealings and maintain the public trust in its public institutions.

[8] The Court considers the following to be mitigating:

First, the fact that this was an isolated act that occurred at one time, rather than acts that were planned and executed over an extended period.

Second, Warrant Officer Tourville's career in the Canadian Forces, which was previously unblemished. However, the Court cannot consider your performance while you were posted in Mexico City as mitigating with regard to the offence of fraud since, under subsection 380.1(2) of the *Criminal Code*, the commission of the offence was related to your status as Defence Attaché Assistant in Mexico.

Last, the Court accepts the lack of a conduct sheet or criminal record as a mitigating factor.

[9] The prosecution recommends that this Court impose on you a sentence consisting of a demotion to the rank of sergeant and a fine of \$3,000. The prosecution argues that imposing such a sentence would have the aim of protecting the public by placing the emphasis on denunciation of the act and specific deterrence. The defence submits that, in the circumstances of this case, only a reprimand is required and that the proposed fine should not exceed \$500. I do not believe that specific deterrence is a primary factor in this case, although the sentence must take this factor into account. In my view, general deterrence must take precedence and the accused's actions must be denounced, since he brings the integrity of the government into disrepute and his actions constitute an abuse of both the employer's trust and the trust of a person who had dealings with the Canadian government in a foreign country, even though the amounts concerned are relatively insignificant.

[10] For these reasons, the Court sentences Warrant Officer Tourville to a severe reprimand and a fine of \$2,000, payable in equal monthly installments of \$200. If the offender is released from the Canadian Forces before the fine imposed by the Court is paid in full, the balance of this fine will become payable immediately prior to the date of his release.

COLONEL M. DUTIL, C.M.J.

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